



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0714]

RIN 1625-AA08

Special Local Regulation; Partnership in Education, Dragon Boat race; Maumee River, Toledo, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes establishing a permanent Special Local Regulation on the Maumee River, Toledo, Ohio. This regulation is intended to regulate vessel movement in portions of the Maumee River during the annual Dragon Boat Races. This special local regulated area is necessary to protect race participants from other vessel traffic.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0714 using any one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>.

Fax: 202-493-2251.

Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LTJG Benjamin Nessia, Response Department, MSU Toledo, Coast Guard; telephone (419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

## A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via [www.regulations.gov](http://www.regulations.gov), it will be considered received by the Coast Guard when the comment is successfully transmitted; a comment submitted via fax, hand delivery, or mail, will be considered as having been received by the Coast Guard when the comment is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "OPEN DOCKET FOLDER" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. You may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

### B. Regulatory History and Information

On May 11, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation; Partnership in Education Dragon Boat Race, Maumee River Toledo, OH in the Federal Register (Docket Number USCG-2011-0211, 76 FR 27284). No public comments were received; a public meeting was not requested, and no public meetings were held. However, the Coast Guard elected not to publish a final rule (FR) following that 2011 NPRM. Given the length of time since the 2011 NPRM

comment period ended, the Coast Guard has decided to again solicit public comments for this annual event. In addition to the 2011 NPRM, the Coast Guard established a temporary final rule (TFR) earlier this year to establish Special Local Regulations for the 2012 occurrence of this event (full text not published in the Federal Register). Because of the application submission by the sponsoring organization was delayed in 2012, the Coast Guard used the "Good Cause" exception to the Notice & Comment requirement of the Administrative Procedure Act.

#### C. Basis and Purpose

Each year, an organized racing event takes place on the Maumee River in which participants paddle Hong Kong style Dragon Boats from International Park to Owens Corning on the Maumee River in Toledo, OH. This recurring event is known as the Dragon Boat races. The Captain of the Port Detroit has determined that this dragon boat race in close proximity to other watercraft and in the shipping channel poses a significant risk to public safety and property. Thus, the Captain of the Port Detroit has determined it necessary to establish a permanent Special Local Regulation around the location of the race's course to ensure the safety of persons and property at this annual event and help minimize the associated risks.

#### D. Discussion of Proposed Rule

As suggested above, this proposed rule is intended to ensure safety of the public and vessels during the Dragon Boat Races. This proposed rule will become effective 30 days after the final rule is published in the Federal Register. However, the Special Local Regulation will only be enforced annually on the third or fourth Saturday in July from 6:00 a.m. until 6:00 p.m. Vessel traffic may proceed down the West side of the river at a no wake speed during racing. The races will stop for oncoming freighter or commercial traffic. The on-scene representative may be present on any Coast Guard, state or local law enforcement, or sponsor provided vessel assigned to patrol the event. The on-scene representatives may permit vessels to transit the area when no race activity is occurring. Coast Guard proposes that all vessels transiting the area shall proceed at a no-wake speed and maintain extra vigilance at all times.

This Special Local Regulation will encompass all navigable waters of the United States on the Maumee River, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41° 39'5.27"N; 083° 31'34.01"W straight across the river along the Cherry Street bridge to position 41°39'12.83"N; 083°31'42.58"W and a line extending from a point of land just south of International Park at position 41° 38' 46.62"N; 083°31'50.54"W straight across the river to the

shore adjacent to the Owens Corning building at position 41° 38'47.37"N; 083°32'2.05"W. These coordinates are North American Datum of 1983 (NAD 83).

The Captain of the Port will notify the affected segments of the public of the enforcement of this Special Local Regulation by all appropriate means. Means of notification may include publication of Notice of Enforcement (NOE) in the federal register, Broadcast Notice to Mariners, and Local Notice to Mariners.

#### E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on



the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The Special Local Regulation will be relatively small and be enforced for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the area when permitted by the Captain of the Port.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the portion of the Maumee River discussed above annually on the third or fourth Saturday of July from 6:00 a.m. until 6:00 p.m.

This proposed Special Local Regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for approximately twelve hours the day of its effective period. In addition, on-scene representatives will allow vessels to transit along the Western side of the river at a slow no wake speed. The race committee will stop the races for any oncoming commercial traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Benjamin Nessia, Response Department, MSU Toledo, Coast Guard; telephone

(419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to

health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### 13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a Special Local Regulation and is therefore categorically excluded under figure 2-1, paragraph (34)(h), of

the Instruction. During the annual permitting process for this Dragon Boat Race event an environmental analysis will be conducted, and thus, no preliminary environmental analysis checklist or Categorical Exclusion Determination (CED) will be required for this rulemaking action. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add § 100.921 to read as follows:

§ 100.921 Special Local Regulations, Partnership in Education, Dragon Boat Festival, Toledo, OH.

(a) Regulated Area. The regulated area includes all U.S. navigable waters of the Maumee river, Toledo, OH, bound by a line extending from a point on land just north of the Cherry Street Bridge at position 41° 39'5.27"N; 083° 31'34.01"W straight

across the river along the Cherry Street bridge to position 41°39'12.83"N; 083°31'42.58"W and a line extending from a point of land just south of International Park at position 41° 38' 46.62"N; 083°31'50.54"W straight across the river to the shore adjacent to the Owens Corning building at position 41° 38'47.37"N; 083°32'2.05"W. These coordinates are North American Datum of 1983 (DATUM: NAD 83).

(b) Enforcement Period. These Special Local Regulations will be enforced annually on the third or fourth Saturday of July from 6:00 a.m. until 6:00 p.m. The exact dates and times will be determined annually and published annually in the Federal Register via a Notice of Enforcement.

(c) Special Local Regulations.

(1) In accordance with the general regulations in section § 100.901 of this part, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for vessels participating in the event. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by the Coast Guard's on-scene representative or by event representatives during the event.

(2) The "on-scene representative" of the Captain of the Port, Sector Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Detroit to act on his behalf. The on-scene



representative of the Captain of the Port, Sector Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Detroit or his designated on scene representative may be contacted via VHF Channel 16.

Dated: August 6, 2012

J. E. OGDEN  
Captain, U.S. Coast Guard  
Captain of the Port, Sector Detroit

[FR Doc. 2012-22153 Filed 09/07/2012 at 8:45 am; Publication Date: 09/10/2012]